



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2004

Mr. Alan T. Ozuna
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2004-7960

Dear Mr. Ozuna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 211791.

The Roma Police Department (the "department"), which you represent, received a request for information pertaining to a particular traffic accident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that the submitted information contains an arrest warrant and supporting affidavit. The 78th Legislature amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is *public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk

¹We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Code Crim. Proc. art. 15.26 (emphasis added). This provision makes the submitted arrest warrant and supporting affidavit expressly public. The exceptions found in the Act do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the department must release the submitted arrest warrant and supporting affidavit to the requestor.

We also note that the submitted information includes a "Texas Peace Officer's Accident Report." Section 550.065(b) of the Transportation Code states that it "applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]" This section states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.*

In this instance, the requestor has provided the department with all three listed pieces of information. Therefore, the department must release an unredacted copy of the "Texas Peace Officer's Accident Report" to this requestor. *See* Open Records Decision No. 525 (1989) (exceptions found in predecessor to Act do not, as general rule, apply to information that is made public by other statutes).

We next note that the submitted information includes a court-filed document, which is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, it does not constitute other law for purposes of section 552.022, and the court-filed document may not be withheld on this basis. We have marked this document, which must be released in accordance with section 552.022(a)(17).

We turn now to your arguments regarding the remaining submitted information. Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a

governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the remaining submitted information pertains to a pending criminal prosecution. Based on your representations, we conclude that section 552.108 is applicable to the remaining submitted information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Thus, the department must release the types of information that are considered to be front page information, including a detailed description of the offense, even if this information is not actually located on the front page. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). The remaining submitted information may be withheld pursuant to section 552.108(a)(1).

In summary, the department must provide the requestor with an unredacted copy of the arrest warrant and supporting affidavit in accordance with article 15.26 of the Code of Criminal Procedure. Pursuant to section 550.065 of the Transportation Code, the department must provide the requestor with a copy of the "Texas Peace Officer's Accident Report." The court-filed document we have marked must be released in accordance with section 552.022(a)(17) of the Government Code. Other than basic information, the department may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

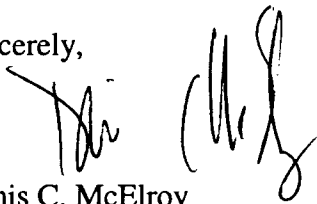
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "DMC", followed by a large, stylized flourish or signature element.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/jev

Ref: ID# 211791

Enc. Submitted documents

c: Mr. Leonel Garza, Jr.
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(w/o enclosures)